

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2021 ND 48

Eddie Salvador Gil,

Appellant

v.

Workforce Safety and Insurance,

Appellee

No. 20200253

Appeal from the District Court of Williams County, Northwest Judicial District, the Honorable Benjamin J. Johnson, Judge.

AFFIRMED.

Opinion of the Court by Crothers, Justice.

Stephen D. Little, Bismarck, ND, for appellant; submitted on brief.

Mitchell D. Armstrong, Special Assistant Attorney General, Bismarck, ND, for appellee; submitted on brief.

Gil v. WSI
No. 20200253

Crothers, Justice.

[¶1] Eddie Gil appeals from a judgment dismissing his appeal of a denial of his worker’s compensation claim. Gil argues this Court should recognize a good-cause exception to excuse the untimely filing of his notice of appeal due to an inability to understand English. We affirm.

I

[¶2] Gil filed a worker’s compensation claim after an alleged slip and fall on March 2, 2019. Workforce Safety & Insurance denied Gil’s claim on July 18, 2019. On November 5, 2019, a formal administrative hearing was held. Gil appeared in person without an attorney. A Spanish-speaking translator was provided for him by telephone. Gil explained he had a witness who was unavailable at the time, was surprised to have no legal representation present, and he could not read WSI’s exhibits. Gil and WSI’s medical director testified.

[¶3] The administrative law judge found Gil did not prove he suffered a compensable work injury and affirmed WSI’s denial. On January 21, 2020, the ALJ’s decision was mailed to Gil. Gil appealed to the district court on February 24, 2020—34 days after the ALJ’s decision. On April 24, 2020, the district court issued an order to show cause why Gil’s appeal should not be dismissed for failure to serve WSI with the notice of appeal. Gil responded by serving the document on the ALJ and himself. A telephone status conference was held June 1, 2020, where among other things WSI argued Gil’s appeal should be dismissed as untimely. WSI subsequently moved to dismiss Gil’s claim, both parties briefed the matter, and the district court granted WSI’s motion to dismiss. Gil appeals from that dismissal order.

II

[¶4] Gil argues we should recognize a good cause exception to the filing time requirements under N.D.R.Ct. 3.5(f) because of his inability to read and understand English. Rule 3.5(f), N.D.R.Ct., permits the district court, upon

showing good cause, to “grant appropriate relief if electronic filing or electronic service was not completed due to technical problems.” Nothing in this record supports a conclusion that Gil’s failure to timely file and serve his notice of appeal was due to technical problems. Further, an appeal from an administrative decision is taken by filing a notice of appeal and specifications of error within 30 days of the issuance of the order. N.D.C.C. § 28-32-42(4). Thus, “Appeals to the district court from decisions of an administrative agency are statutory in nature. . . . For the district court to acquire subject matter jurisdiction over an appeal from a decision of an administrative agency, the appellant must satisfy the statutory requirements for perfecting the appeal.” *Benson v. Workforce Safety Ins.*, 2003 ND 193, ¶ 5, 672 N.W.2d 640. “If the appellant does not serve the notice of appeal as required by the statute, the district court lacks subject matter jurisdiction and the appeal must be dismissed.” *Id.* at ¶ 6; *see also Opp v. Dir., N.D. Dep’t of Transp.*, 2017 ND 101, ¶¶ 19-20, 892 N.W.2d 891 (concluding rules limited to matters arising under procedure may not be utilized to enlarge periods of time definitely fixed by statute).

III

[¶5] We affirm the judgment dismissing Gil’s appeal.

[¶6] Jon J. Jensen, C.J.
Gerald W. VandeWalle
Daniel J. Crothers
Lisa Fair McEvers
Jerod E. Tufte